

IN THE HIGH COURT OF DELHI AT NEW DELHI

OMP. No.87/2007

Date of decision : 13.05.2008

IN THE MATTER OF :

MRS. GURDEEP KAUR Petitioner

! Through : Mr. R.M. Aggarwal, Adv.

Versus

\$ MRS. C.K. BEDI & ANR. Respondents

^ Through : Mr. Sanjeev Sahay with
Ms. Aanchal Mullick, Advs. for R-1.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may
be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be
reported in the Digest? No

HIMA KOHLI, J. (O R A L)

**I.As.No.6374 & 6375/2006 & 1807/2007 (for condonation
of delay)**

Although, notice was issued on I.A. No.1807/2007, vide order dated 19.2.2007, vide order dated 13.12.2007, the orders passed on 19.2.2007, 28.5.2007 & 10.7.2007 were recalled. Appearance was entered on behalf of the respondents on 13.12.2007. However, no replies have been filed. The aforesaid

applications are not seriously opposed by the counsel for the respondents.

As per the averments made in the applications filed by the petitioner, condonation of delay of 23 days in filing the accompanying petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as '**the Act**') is sought by the petitioner. It is submitted by the petitioner that the award was rendered on 5.7.2006. Though a copy of the same was received by the counsel for the petitioner on 10.7.2006, as the petitioner was abroad at the relevant time, she received the award from her counsel only on 16.9.2006, after returning to India. Immediately thereafter, steps were taken to file the petition under Section 34 of the Act which came to be filed on 31.10.2006. It is thus stated that while a period of 3 months when calculated w.e.f. 10.7.2006 expired on 9.10.2006, the period of 3 months if calculated w.e.f. 16.9.2006, had yet to expire on the date of filing the objection petition. The provisions of Section 34 (3) of the Act are invoked by the petitioner to state that sufficient cause is made out for seeking condonation of delay beyond a period of three months, but within a period of 30 days from the date of receipt of the award.

For the reasons stated in the applications, particularly, para 3 thereof, the petitioner has shown just and sufficient cause

for being prevented from making an application under Section 34 of the Act within the stipulated period of three months. Accordingly, the applications are allowed and the delay beyond three months, but within thirty days thereafter in filing the accompanying petition under Section 34 of the Act is condoned.

OMP. No.87/2007

1. The present petition is filed by the petitioner who is the sister of the deceased respondent No.1, assailing the award dated 5.7.2006 passed by the learned Arbitrator appointed in CS(OS) Nos. 1732/1993, 1780/1994 and A.A. No.178/1996. With the consent of the parties, vide order dated 10th April, 2002, the learned Arbitrator was appointed to adjudicate all the disputes between the parties.

2. While it is not denied by the petitioner that Mrs. C.K. Bedi, the respondent no.1 expired during the pendency of the arbitration proceedings on 8.11.2004, the petitioner has chosen not to implead all her legal heirs on the record and has instead sued the deceased respondent No.1 only through her husband, Mr. W.M. Bedi, which is apparent from a perusal of the memo of parties.

3. The dispute between the parties hinges on a plot of land measuring 1005 sq. yards bearing Municipal No.W-19, G.K. Part-II, New Delhi, purchased by the respondent No.1, a British

citizen, vide registered sale deed dated 3.6.1975, after obtaining permission from the Reserve Bank of India. After a decade or so, the respondent No.1 decided to sell the said plot of land and requested the petitioner, her sister and Shri Joginder Singh, the husband of the petitioner to arrange the sale of the land. This lead to a series of documentations, including execution of powers of attorney by respondent No.1 in favour of the husband of the petitioner, an agreement dated 18.1.1991 entered into by the respondent No.1 with the petitioner as Sole Proprietor of K.P. Associates, a Development and Construction Agreement dated 15.10.1990 executed between the petitioner and the respondent No.2, a collaboration agreement dated 14.12.1990 executed by the petitioner with one M/s R.A.M. Builders and Promoters, a Memorandum of Understanding dated 1.11.1990 between the petitioner and the respondent No.2 and cancellation thereof, vide deed dated 28.3.1991.

4. The respondent No.2 commenced the construction on the plot and completed most of the work by the year 1992, when disputes arose between the petitioner and the respondent No.1. In August, 1992, so as to resolve the disputes between the sisters, a set of documents came to be executed. These included an agreement dated 18.8.1992 executed between the petitioner and the respondent No.2, an agreement dated 19.8.1992 executed between the petitioner and the respondent No.1 and an

MOU dated 20.8.1992 signed by respondent No.1. Despite the execution of the aforesaid documents, disputes kept lingering between the parties relating to the sale value of the land. In 1993, the petitioner instituted a suit in this Court against the respondents, seeking amongst others, a decree of declaration to the effect that the documents executed by her in August, 1992 were executed under coercion and undue influence, a decree for permanent injunction, damages, etc.

5. During the pendency of the aforesaid suit, the petitioner arrived at a compromise with the respondent No.1 on 20.3.1998 as detailed in para 28 of the impugned award. It is the case of the petitioner that the respondent No.1 failed to comply with the terms of the MOU dated 20.3.1998. In the meantime, the respondent No.2 also jumped into the fray and instituted a suit in this Court against the petitioner and the respondent No.1 for recovery of money arising out of the transaction pertaining to the same property. The respondent No.2 filed a separate petition under Section 11 of the Act against the respondent No.1 invoking an arbitration clause governing the parties. All the aforesaid disputes came to be referred to the learned Arbitrator who passed the impugned award dated 5.7.2006. The subject matter of the present petition is confined to the no relief award passed with respect to the dispute between

the petitioner and the respondent No.1 (subject matter of the case No.306/2002, as numbered by the learned Arbitrator).

6. Though a number of grounds have been taken in the petition for setting aside the award, in the course of arguments, counsel for the petitioner has confined his challenge only to three grounds. The award is assailed by the petitioner on the ground that the findings given by the learned Arbitrator in para 42 of the award to the effect that only a bald assertion unsubstantiated with evidence was made by the petitioner/claimant to the effect that various documents were executed between the petitioner and the respondent No.1 in the year 1992 in terms of which the parties buried their differences and arrived at a settlement, are based on erroneous assumptions. Counsel for the petitioner submits that the learned Arbitrator erred in arriving at the aforesaid conclusion and that the allegations of the petitioner/claimant to the effect that all the documents executed in the year 1992 were executed by the petitioner by exercise of coercion, threat and undue influence on her, ought to have been accepted by the learned Arbitrator.

7. The second argument urged by the learned counsel for the petitioner to assail the impugned award is to the effect that Flat G-1 in the building constructed on the plot of land, which was agreed to be gifted by the respondent No.1 to the petitioner in terms of the settlement arrived at between the parties in the year

1992, comprised of only a flat and did not include front courtyard and the basement, is unjustified and contrary to the sanctioned plans of the building. Counsel for the petitioner submits that the learned Arbitrator failed to take into consideration the fact that there was a basement and front courtyard existing at the site which ought to have fallen to the share of the petitioner.

8. The third and the last ground urged by the counsel for the petitioner is that the respondent No.1 failed to execute/register the gift deed in respect of Flat G-1 of the building in favour of the petitioner, which fact according to the petitioner, was not taken into consideration by the learned Arbitrator.

9. It is pertinent to note that all the aforesaid three grounds taken on behalf of the petitioner to assail the impugned award are purely factual in nature. The law is well settled that the scope of the Court's interference in an Arbitral Award is very limited. This Court is not expected to sit in appeal or judgment over the judgment of the Arbitrator. In Hindustan Construction Co.Ltd.Vs. Governor of Orissa & Ors. reported as **AIR 1995 SC 2189**, it was held that the Court cannot reappreciate the material on the record. In Hindustan Iron Co.Vs. K.Shashikant & Co. reported as **AIR 1987 SC 81**, the Supreme Court held that the award of the Arbitrator ought not to be set aside for the reason that, in the opinion of the Court, the Arbitrator reached wrong conclusions or failed to appreciate the facts. In Podu Thozillar

Sangam Vs. Balasubramania Foundary & Ors. reported as **AIR 1987 SC 2045**, it has been opined that it is only an error of law and not a mistake of fact committed by the Arbitrator which can be adjudicated in the application/objection before the Court.

10. The Supreme Court in the case of M/s Sudarsan Trading Co. Vs. The Government of Kerala and Anr. reported as **AIR 1989 SC 890** held that once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the Arbitrator to consider and decide, on which the Court cannot substitute its own decision. If on a view taken of a contract, the decision of the arbitrator on certain aspects, is a possible view, though perhaps not the only correct view, the award cannot be examined and set aside by the Court on the said ground.

11. It is also a settled legal proposition that where two views were possible, it could not be predicated that there was an error apparent on the face of the award. (Refer: Hind Builders Vs. Union of India, **AIR 1990 SC 1340**). In Bijendra Nath Srivastava Vs. Mayank Srivastava & Ors. reported as **AIR 1994 SC 2562**, the view expressed by the Supreme Court was that the reasonableness of reasons given by the Arbitrator were not open to challenge and that the proper approach would be for the Court to support the award.

12. A perusal of the impugned award, particularly, para 42 thereof shows that the learned Arbitrator has duly taken into consideration the allegations of the petitioner that inspite of the fact that documents were executed between the parties i.e. the petitioner and the respondent No.1 in the year 1992 to settle all the disputes between them in respect of the subject matter premises bearing No.W-19, Greater Kailash-II, Delhi, a quietus was achieved only in March, 1998, when a Memorandum of Understanding was executed between the petitioner and the respondent No.1. As per the said MOU, the respondent No.1 agreed to take certain steps including handing over of vacant possession of Flat No.G-1 in the building to the petitioner and executing and signing necessary documents for transferring and conveyance thereof in favour of the petitioner. She also agreed to pay a sum of Rs.4.00 lacs to the husband of the petitioner towards reimbursement of expenses incurred by him on her behalf. She further agreed to refund an amount lying in the two saving bank accounts in Delhi and to register/execute by way of a gift deed the flat in question in favour of the petitioner and get the same registered at her own expense.

13. It is clearly recorded by the learned Arbitrator in paras 28 & 29 of the award that the respondent No.1 took all the necessary steps as undertaken by her in March, 1998. She handed over flat No.G-1 to the petitioner, who in turn executed a

receipt confirming taking over possession of the flat. A sum of Rs.4,00,000/- was paid by the respondent No.1 to the husband of the petitioner, duly acknowledged, vide receipt dated 20.3.1998 and letters were also given to the husband of the petitioner for operating the two bank accounts of the respondent No.1. She even paid to the husband of the petitioner, a sum of Rs.1,20,000/- for obtaining stamp duty for preparation of the gift deed, duly evidenced by the bank statement of the respondent No.1. However, the respondent No.1 expired on 8.11.2004. As she expired, the question of executing a gift deed in respect of the said flat No. G-1 of the building in favour of the petitioner could not arise. It was held in the award that in any case, by virtue of a will already executed by the respondent No.1 in favour of the petitioner, the petitioner inherited the said flat to the exclusion of all other legal heirs of the deceased respondent No.1. Thus the findings of the learned Arbitrator as given in para 49 of the award to the effect that under the law, the flat stands inherited by the petitioner on the basis of the will executed by the respondent No.1 in her favour, cannot be faulted.

14. Similarly, the learned Arbitrator is justified in returning a finding in para 42 of the award that there were no particulars furnished by the petitioner on the record as to when and how threats were extended to her to coerce her to execute various documents in the year 1992 to arrive at a settlement with the

petitioner. In fact, the learned Arbitrator has observed that except for a bald assertion made by the petitioner to the effect that her two sons settled abroad were extended threats by the respondent No.1 and her husband, there were no particulars of such threats or evidence placed on the record by the petitioner to establish the same. Thus, the learned Arbitrator committed no error in holding that the petitioner was unable to establish the fact that she had executed the document in question in the year 1992, under any threat, coercion or undue influence.

15. As regards the last objection as to the entitlement of the petitioner to the front courtyard and basement as part of Flat G-1 of the building, of which possession was given by the deceased respondent No.1 to the petitioner, counsel for the petitioner on being asked, confirms that there is no written document executed between the parties to the effect that Flat G-1 of the building included the front courtyard and the basement. He instead relies on the sanctioned plan which he states refers to the front courtyard and the basement as being part of the ground floor flat. He contends that the petitioner is justified in claiming that she has not been handed over complete possession of the flat by the respondent No.1. Disbelieving the aforesaid contention raised on behalf of the petitioner/claimant, the learned Arbitrator arrived at a conclusion that it cannot be pleaded that the husband of the claimant was unaware that 16 flats were

being constructed on the plot of land, particularly since till March, 1992 most of the construction was complete. The report of the Local Commissioner, appointed in the suit filed by the petitioner/claimant, was adverted to by the learned Arbitrator who observed that even the said Local Commissioner indicated in his report that there were 16 flats in existence in the building. He rightly noticed that in the year 1998, when the MOU was executed, the petitioner and her husband were very well aware of the structure of flat No.G-1 of the building which was agreed to be taken by them.

16. This Court does not find any error in the conclusion of the learned Arbitrator that the petitioner or her husband did not give any notice to the respondent No.1 that any portion of the ground floor of the flat G-1 of the building had not been handed over to them. Instead, the petitioner executed a receipt confirming handing over of the flat to her. Thus, it was rightly held in the award that the petitioner/ claimant had no right left in the building in question and she could not rely on the agreements made in the year 1990-91 in view of the fact that the same were validly cancelled, by execution of the agreement in August, 1992 and the MOU in March, 1998.

17. In view of the fact that this Court does not find any jurisdictional error, illegality, arbitrariness or perversity in the

impugned award, which deserves interference, the present petition is dismissed as being devoid of merits.

MAY 13, 2008
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HIMA KOHLI,J